

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA *et al.*,

Plaintiffs,

v.

DEFENSE DISTRIBUTED *et al.*,

Defendants.

No. 2:18-cv-03208-PD

RESPONSE TO MOTION TO REINSTATE

Plaintiffs Commonwealth of Pennsylvania, Governor Tom Wolf, Attorney General Josh Shapiro, and the Pennsylvania State Police respectfully submit this response to Defendants’ Motion to Reinstate, filed March 27, 2020. *See* ECF No. 32. Because related litigation between certain of the parties remains ongoing in the Ninth Circuit, principles of judicial economy warrant denying Defendants’ request to reinstate this case at this time.

1. Plaintiffs filed this action on July 29, 2018, against Defendants Defense Distributed, DEFCAD, Ghost Gunner and Cody Wilson, seeking declaratory and injunctive relief. ECF No. 1. Plaintiffs sought, among other relief, an injunction prohibiting Defendants from “making any 3D printable firearms available over the internet in Pennsylvania.” *Id.* at 31-32. The action was filed in response to efforts by Defendants to distribute, over the internet, certain information that would allow for the automated production of firearms using a so-called “3D Printer.”

2. In connection with their complaint, Plaintiffs filed a motion for a temporary restraining order and preliminary injunction. ECF Nos. 1 & 2. At a telephonic hearing held the same day, Defendants agreed “to refrain from posting new information and to block all challenged information from being accessed in Pennsylvania,” and this Court subsequently denied Plaintiffs’ motion as moot. ECF No. 4.

3. On July 30, 2018, Plaintiffs filed an amended complaint and a second motion for a preliminary injunction. ECF Nos. 6 & 7.

4. On August 27, 2018, this Court entered an order “mark[ing] the case as closed for statistical purposes pending the outcome of proceedings related to Defendants in *Washington v. United States Dep’t of State*, Civ. No. 18-1115 (W.D. Wash. Filed July 30, 2018) [*Washington I*].” ECF No. 25. On February 19, 2019, this Court denied Plaintiffs’ second motion for a preliminary injunction without prejudice. ECF No. 27.

5. *Washington I* is a related action brought by several states, including Plaintiff Commonwealth of Pennsylvania, against the U.S. Department of State and other government defendants as well as Defense Distributed and other private defendants. That action challenged, *inter alia*, a “Temporary Modification of Category I of the United States Munitions List” issued by the State Department on July 27, 2018. Compl., ECF No. 1, *Washington I* (July 30, 2018). As alleged in that complaint, the “Temporary Modification” was issued pursuant to a settlement reached between the federal government and Defendant Defense Distributed relating to Defense Distributed’s efforts to distribute over the internet information that would allow for the production of firearms using 3D printer technology. *Id.* ¶¶ 2-3.

6. As alleged in the complaint in *Washington I*, the “Temporary Modification ... permits the dissemination of certain [computer-aided design] files in Defense Distributed’s possession, including files used to create undetectable and untraceable weapons.” *Id.* ¶ 3. In connection with the Temporary Modification, the State Department had agreed to issue a letter to Defendant Defense Distributed and others stating that certain electronic files relating to the production of 3D-printed firearms “are approved for public release (i.e., unlimited distribution) in any form and are exempt from the export licensing requirements of the [International Traffic in Arms Regulations.]” *Id.* ¶ 51(c).

7. On November 15, 2019, the district court in *Washington I* entered partial judgment in favor of plaintiffs. ECF Nos. 192 & 193. The court vacated the Temporary Modification and the letter to Defendant Defense Distributed, finding that both were unlawful. ECF No. 193.

8. On January 14, 2020, Defense Distributed filed a notice of appeal of the judgment in *Washington I* with the Court of Appeals with the Ninth Circuit. ECF No. 197. Under the schedule entered by the Ninth Circuit, Defense Distributed’s opening brief is due April 23, 2020. ECF No. 1, No. 20-35030 (9th Cir. Jan. 15, 2020).

9. On January 23, 2020, the federal government published two final rules that had the effect of removing certain technical data relating to the production of 3D-printed firearms from the U.S. Munitions List and transferring authority over such data to the Department of Commerce (the “Final Rules”). The effect of these rules was that such data would “be exempt from any meaningful regulation and no longer subject to direct

Congressional oversight.” Compl. ¶ 2, ECF No. 1, *Washington v. United States Dep’t of State* (“*Washington II*”), No. 2:20-cv-00111-RAJ (W.D. Wash. Jan. 23, 2010).

10. Several states, including Plaintiff Commonwealth of Pennsylvania, sued the Departments of State and Commerce, among other defendants, over the Final Rules. See Compl., ECF No. 1, *Washington II*. Defense Distributed was not named as a defendant in this action. Plaintiffs alleged that the Final Rules suffered from many of the same deficiencies as the vacated Temporary Modification.

11. On March 6, 2020, the district court in *Washington II* entered a preliminary injunction prohibiting the federal government from implementing one of the Final Rules “insofar as it alters the status quo restrictions on technical data and software directly related to the production of firearms or firearm parts using a 3D-printer or similar equipment.” Order, ECF No. 94, *Washington II*, at 22. That case otherwise remains pending in district court.

12. Notwithstanding the issuance of the Final Rules, the appeal filed by Defendant Defense Distributed in the Court of Appeals for the Ninth Circuit over the judgment in *Washington I* remains pending.

Plaintiffs respectfully submit that Defendants’ request to reopen this case should be denied pending a final resolution *Washington I*, consistent with this Court’s order of August 27, 2018. If this Court reopens the case before that appeal is resolved, it risks having to revisit the issues presented by this case if the judgment entered in *Washington I* is reversed or modified by the Ninth Circuit. Therefore, because the outcome of this case may be affected by the resolution of Defense Distributed’s appeal in *Washington I*,

principles of judicial economy warrant denial of Defendants' motion until *Washington I* is resolved.

April 10, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the Clerk of the Court for the United States District Court for the Eastern District of Pennsylvania through the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: April 20, 2020

/s Michael J. Fischer
Michael J. Fischer